Title V. I believe that's the last one.

MR. HARNETT: Okay. Verena Owen?

MS. OWEN: Thanks for coming out here today and talking to us. We appreciate it.

I have, I think, two clarifying questions. When you started talking about the concerns, you talked about conversion of limits to pounds per hours, and then you said from other standouts, and then you added that did not exist prior. So I can't in my mind understand what -- by a conversion would then happen if nothing existed prior to the conversion.

MR. EVANS: The pound-per-hour limit did not exist. That's substantially a different standard than if you had a ton-per-year limit. What we've seen -- I think someone brought this up earlier -- a lot of times in that conversation they simply took that ton-per-year limit and divided it by 12 or 8,760 or whatever number they needed to get, and that is a severely more restrictive limitation than ton-per-year limit.

A ton-per-year limit is like an annual average. You can agree or disagree on what the averaging link should be, but there should -- if

it's done correctly, even assuming that a conversion should take place at all, the pound-per-hour limit should be much higher than the annual limit to allow for hourly fluctuations in a process that would get smoothed out in an annual average, and very often that is not done.

But in some cases those ton-per-year limits were, in fact, created out of thin air. There was absolutely nothing there previously but because of the Title V permit form, the application form that needed to be filled in, and there was no previous limit on that.

MS. OWEN: You might have answered my next question already. Because before you talked about that, you said that you are concerned about additional requirements that are added to a Title V permit, and I was going to ask you for some examples.

MR. EVANS: Some examples might be a scrubber, for example. If a scrubber was there that was not put there for compliance purposes, suddenly there are monitoring requirements on that scrubber.

Another example is the use of process

data. I can think of one example where an oxygen analyzer was used, for example, as an indicator of whether the process was working normally. And it was a process indicator to show whether the process was in an upset state or not. But that got turned around, and the O2 analyzer, in effect, became almost like a surrogate nox analyzer. And a violation of that O2 analyzer, which was never intended to be used for compliance, became, in fact, a compliance indicator. So those are a couple things I can think of recently.

MS. OWEN: Thank you.

MR. HARNETT: Don van der Vaart?

MR. VAN DER VAART: Yeah. I guess my question was, when you said that monitoring should not be the sole per basis of your plant certification, I totally agree that Congress did not -- I mean, explicitly made the point that the monitoring that was required to assure compliance didn't need to be continuous monitoring.

MR. EVANS: Right, right.

MR. VAN DER VAART: Should be reasonable.

My question is, do you mean that the permit -- is your point there that the Title V

permit should not have to define compliance? Notwithstanding monitoring. I mean, it can be, you know, O&M; it can be, you know, material balances; it can be -- but are you saying that you didn't think the Title V permit was supposed to define class, or just that the monitoring shouldn't be the --

MR. EVANS: No, I think Title V does need to define compliance. I'm saying that monitoring is one way to indicate compliance. O&M might be another way. Limitations on VOCs and process materials might be another way.

I think when people don't talk about, "We need more monitoring data," it sounds like we need to put a continuous emission monitor on every source in the facility to really be sure that we know they're complying, and I really don't believe that's the case.

MR. HARNETT: Michael Ling.

MR. LING: You mentioned very early in your testimony that you thought that the regulations, state and federal regulations, are best done by incorporation by reference. I'm wondering if you could describe how your experience led you to that

conclusion. And also, if you could just talk a little more about how you see incorporation by reference working, since it means different things to different people.

MR. EVANS: Well, my experience has been in dealing with these enormous permits that do nothing more than essentially copy pages and pages and pages out of the Federal Register, which are really not necessary.

There is certainly an issue in incorporation by reference of the level of detail you need. Actually, it is a complicated problem, because when we go in and work with a facility to determine compliance, essentially that's what we do. If there is a reference in their permit that says they have to comply with the refinery MACT, then we have to go through the refinery MACT line by line, paragraph by paragraph, and pick out the sections that apply to this particular facility, because depending on what kind of refinery it is, there may be sections that they must comply with and sections that they don't need to comply with, or there may be options that they choose from for different compliance methods.

So it's almost a case by case for facilities. So I'm not sure -- you certainly could do the legwork up-front. And, you know, I have a table of references possibly that say these sections would apply to this facility, but I think even just a broad reference to the refinery MACT, for example, would be better than reproducing -- putting the entire rule in there does absolutely nothing. You might as well incorporate it by reference because you get the same level of information, if you have 50 pages versus one citation. I don't know if that helped.

MR. HARNETT: Richard Van Frank.

MR. VAN FRANK: You mentioned the necessity of new requirements and new monitoring. Isn't actually the case many of the times that these requirements are there because you're dealing with very old permits that are outdated, and this is the only way to get a Title V permit written is to include the monitoring and up-to-date requirements?

MR. EVANS: If there is no monitoring because it's an old permit, then there are provisions under Title V, and particularly the periodic

monitoring, to add some of those new requirements. I guess that's not where I have my chief concern.

My chief concern is where there is already monitoring required under an old permit or under a regulation to -- there is a tendency to want to enhance that monitoring even further beyond what there is in the regulation, and those are issues that we struggle with all the time. Sometimes it may be appropriate, but a lot of times it may not be.

MR. VAN FRANK: Well, if I may ask a question of an example, in many instances the opacity was go out and look at the stack once per shift. I don't believe in most cases now, especially for smoky facilities, that's adequate. You really need continuous opacity monitoring.

So would you include that in there as an unnecessary new requirement?

MR. EVANS: I guess my thoughts on monitoring are very, very, very site-specific; even the type of monitoring.

If the facility is operating very, very close to an emission limit, where there is a substantial opportunity for noncompliance there, I

think there is a higher degree of monitoring that may be necessary, especially if it's a large source that's operating very close to that limit.

However, you mentioned smoky facilities. Obviously if a facility is smoky, chances are maybe it's not complying with those opacity limitations, then absolutely they have to do something about that.

But if you've got a baghouse on a lime silo somewhere that has potential emissions only when they're loading lime, which is twice a week, and they've operated this baghouse for five years and never seen a wisp of particulate from this, on that kind of source it doesn't make a lot of sense to put out a continuous monitor.

MR. HARNETT: Shannon Broome?

MS. BROOME: Hi. Just a quick question, following up on some of the stuff you were saying about the O2 analyzer and that they somehow converted that into a measurement of the nox emissions.

As I understood what you were saying, for this permit -- and I don't want you to name the company or anything, but it sounded like they

were saying, "Okay, if you have a number on your 02 analyzer that's below or above X" -- I'm not sure what the relative direction would be.

MR. EVANS: It's 3 percent in this case.

MS. BROOME: Okay. That you would have a violation of your permit? They were saying that?

MR. EVANS: Yeah, absolutely. I guess that's indicative of a larger problem of taking parameter monitoring and treating it as, in effect, surrogate direct monitoring.

MS. BROOME: So in your response to Mr. van der Vaart's question, you were not intending to say that it was appropriate to define compliance with a tool like an O2 monitor?

MR. EVANS: Oh, no. No, no, no.

MS. BROOME: You were not trying to say that? That wasn't what you meant by denied compliance?

MR. EVANS: No.

MS. BROOME: Because I think that that was where his question was leading.

His card's up. I'll let him respond.

MR. EVANS: Do you want to respond before I --

MR. VAN DER VAART: Yeah. I mean, the

question that I've got, I totally agree that if you're not happy with an oxygen monitor being used to define your nox emissions to the point of determining compliance, I don't think anybody would argue that that's inappropriate. I think the question that comes up --

MR. EVANS: The state did in this case.

MR. VAN DER VAART: But what they should come back and say, "Okay, look, we don't like that, but what can we do?"

So here is the question. The question is it's not whether oxygen monitoring is the right answer. The question is, "Look, we both know that we need to define compliance. How do you want to do it?"

MR. EVANS: And actually, we did come up with a solution there. I think it involves talking and education on both sides. And one of the things I can't stress enough for folks going through this is to talk to your permit writers and the state agency people a lot.

But it actually had to -- we had to come to an understanding of what parameter monitoring was all about. And parameter monitoring is not a

substitute for a direct determination of compliance. Parameter monitoring is intended to determine whether or not a process is operating within its normal parameters, and that makes the assumption that you've defined that while you're operating within those normal parameters, that you are in compliance.

And the parameter monitor is just to check to say, "Yeah, the process is operating that same way, so we can be reasonably certain that we're still in compliance." It's not intended to mean if you're 3.1 O2, then you've violated your nox, your nox requirements. That's the problem.

MS. BROOME: So you would not suggest that the parameters should be enforceable.

MR. EVANS: I would not suggest -- not --

MS. BROOME: Limits. That you violate your permit if you exceed a parameter. You're not suggesting that, right?

MR. EVANS: Let me qualify it a little bit. If you had very strong correlation data correlating that parameter with your direct emissions --

MS. BROOME: But only that.

MR. EVANS: (Continuing) -- then I would say that's fair. In the absence of any kind of correlation like that, then it's not reasonable to say that this parameter means that you are out of compliance with the underlying standard. It raises questions is all it does. It says, well, we need to look at this. Something is going on here where this parameter is being --

MS. BROOME: But you wouldn't say that the parameter was enforceable. Then the emission limit is what you just said.

MR. EVANS: I believe the -- yeah.

MS. BROOME: Okay.

MR. EVANS: The emission limits are what --

MS. BROOME: Okay.

MR. EVANS: Are you exceeding that emission limit --

MS. BROOME: I just wanted to make sure --

MR. EVANS: Yes, that's the bottom line.

MS. BROOME: (Continuing) -- how you were treating this. Thanks.

MR. HARNETT: Keri Powell.

MS. POWELL: Thank you for your testimony, Mr. Evans.

MR. EVANS: Sure.

MS. POWELL: I would love to get to talk with you a while on your views on monitoring, but I'm just going to ask you to clarify one area where I'm a little confused by your testimony.

On the one hand, you mentioned concern about the addition of monitoring, where a source is already engaging in some kind of monitoring. But on the other hand, you described circumstances where a source might be operating at a level that is very close to their emission limit, and then you sort of said, "Well, something needs to be done in that case."

So my question for you is, over the course of your work, have you come across circumstances where a source is undertaking some kind of monitoring, but you personally don't think that that monitoring is sufficient to give a reasonable assurance of their compliance? And if you have, how do you think that problem is best dealt with?

MR. EVANS: Sure. I mean, it happens a lot. How it's dealt with, I think, changes from point to point. Some of it has to do with the

monitoring that's available. There is a tendency, I guess, to rely on things like EPA reference methods, for example. But in the case of low nox, you deal with facilities where the compliance limit may be 1.5 parts per million nox. You can do that kind of monitoring, but you're measuring noise.

Anytime we're measuring -- if the difference between compliance is between 1.5 and 1.6, and we measure 1.6, it doesn't tell us anything. The monitoring itself is simply not accurate enough to measure to that level. That may create a problem that is very difficult. How do you take those measurements -- whenever you're dealing with very low measurements or recently with hazardous air pollutants, the monitoring methods simply may not be there, be there with an adequate degree of reliability to provide that.

If they are, it may simply be a matter of doing something like coming up with a site-specific emission factor. If you're depending on, say, an AP 42 factor, a generic emission factor to determine compliance, and we decide that's for whatever reason not adequate --

maybe you've taken a handheld analyzer, you do a stack test, whatever, you find -- you verify that and say, "We're going to adjust this a little bit one way or another," and that will provide more reliability than the method that we were using in the past.

So you may have to change monitoring methods or monitor maybe two parameters instead of one. There are different ways to approach that. Monitoring, at least in my experience, is an extremely site-specific activity, and especially now with the low emission sources and the HAPs.

MS. POWELL: If I can just follow up. So what do you do in a circumstance -- like, you're saying monitoring is site-specific, and in my experience as an advocate, I would agree with that, that it is very difficult to have a one-size-fits-all monitoring regime.

So the question is, if you have a circumstance where a state implementation plan has some kind of monitoring in it, but that monitoring really doesn't look like it's adequate to assure compliance -- like maybe you have a once-per-year method 9 test, where you're just looking at the

smokestack and reading it, and perhaps you have a facility where you think that's really not good enough, what's your position on how the Title V permit should deal with that? Should additional monitoring be added or not?

MR. EVANS: I think there is a difference between what the source does to ensure they're in compliance and what the official compliance test is.

You can certainly do a stack test once a year and claim that you're in compliance, but I don't believe you can do that in isolation. I think one of the things you have to do, if you're doing an annual stack test or annual method 5, is you have to characterize how that source was operating during that time.

And during the year, then, if the source was operating in the same way, I think that that test could be a reasonable determination of compliance.

If it wasn't, if you come up with a situation during the year, you've done your method 9 at the end of the year, you've done your stack test, but you had a major change in the source,

something happened, there is a question raised about compliance. This is where with the compliance certification, you certify continuous or intermittent compliance.

Sometimes you know you're out of compliance. There is no doubt. You can see the fact you're out of compliance. Other times I believe there are periods of uncertainty, where the best data available to you will not allow you to make a strong determination were you in, were you out. You're in an uncertain area, and I think that that needs to be recognized. It shouldn't stand necessarily. I think you have to examine that and say, "How can we avoid these kind of fuzzy periods in the future? Do we have to improve or monitoring or whatever?" That may be the case.

But I think it all has to do with operating the source in the same way, under the same conditions as occurred when your compliance test was done. I think that could go a long way toward assuring compliance, when you have those big gaps between tests.

MS. POWELL: Thank you.

MR. EVANS: I don't know if that happened.

MR. HARNETT: Thank you.

Just for everyone, we're running a little long on this speaker, but there seems to be substantial interest still, and we have some additional time before lunch. If everyone is comfortable, I will continue the questioning -- including Mr. Evans, I will continue the questioning for --

MR. EVANS: I've got nothing else to do.

MR. HARNETT: (Continuing) -- a while longer so we can accommodate all those that have questions. Is that --

MS. OWEN: Bill?

MR. HARNETT: (Continuing) -- okay?

MS. OWEN: Bill, could you just ask if there is somebody in the audience who is a walk-in and would like to speak before we continue?

MR. HARNETT: I had checked at the break, and there were none.

Are there any new walk-ins?

MS. OWEN: Thank you.

MR. HARNETT: All right.

Then next, Steve Hagle.

MR. HAGLE: Thanks. I wanted to go back to your discussion about adding short-term permit limits and short-term emission limits into Title V permits. I want to ask you the same question that the other speaker that mentioned this got asked, and that is, did the permitting authority express the reason why those are getting added or why -- I know you said they were on the forms. I mean, what authority did they have to ask --

MR. EVANS: This happens so frequently. There is, I guess, different reasons. In some of the states, the permit writers simply said it was not within their discretionary ability to eliminate those requirements, that they were told that every single unit on the Title V permit had to have a pound-per-hour emission limit associated with it, and that was the word that was passed down. You start pushing them on what their statutory regulatory authority is for that, and they say, "Well, that's not my concern. I just write permits." So you have to take that to a different level to get some of those answers, I think.

I believe in some cases there is no

statutory regulatory authority to create some of these new limits.

MR. LING: Could it be fee calculations?

MR. EVANS: Some of it is based on fee calculations, which if you had to come up with an estimate on the basis for fee calculations, that's fine, but I think there's a difference between an estimate for fee calculation and an enforceable limitation. For a fee calculation, if you want to be safe, sure, you could just overestimate or whatever on your fees.

MR. HAGLE: But aren't fee calculations based on annual numbers?

UNIDENTIFIED SPEAKER: Ton per year, right.

MR. EVANS: Usually ton per year, I think so, and usually not on pound per hour.

MR. HARNETT: Okay. Lauren Freeman?

MS. FREEMAN: Good morning.

MR. EVANS: Good morning.

MS. FREEMAN: I had a question for you about CAM. You mentioned -- talked a lot of about monitoring and the adequacy of monitoring and the need in some cases to specify monitoring through Title V. You mentioned periodic monitoring is one

obvious one, and CAM, which my understanding is, is one of the major tools intended to address monitoring through Title V.

Whether you had any comments on your experience in implementing CAM and the adequacy of that in dealing with -- I think some of the examples we heard today were you might not have a direct measurement method but still need to monitor the control device. I just wondered if you had any more specific comments on how that is going.

MR. EVANS: Personally I think it's going very well with CAM. It needs to be implemented properly, and I think that was anticipated when Peter put in the requirement for CAM plans, so that somebody would have a chance to review that.

Parameter monitoring is always tricky, and it's always pretty site-specific. But if it's done properly, I think it can provide that reasonable assurance of compliance that we're looking for. And certainly looking at parameters as a surrogate for direct emissions, the question that always comes up, I guess, is what's the cor- -- that's what people are always asking;

what's the correlation? When do we make that determination a violation of the parameter is a violation of the underlying emission standard. And how much information is necessary when you're putting that together.

And those are some of the things, I think, that are still being worked out in that program. If there is any fuzziness in CAM, that's where it's at.

But in most of the cases I've been involved in, the margins of compliance are such that I've been very comfortable that the parameter monitoring that's been done at those facilities does provide, in fact, a reasonable assurance of compliance, and it works very well.

I think it's -- just one other issue on CAM. I think it's interesting to know -- we keep hearing this NRDC lawsuit that happened regarding the CAM decision a while ago. I think that court made a couple of very key statements about the CAM program.

Number one being that CAM complies with the Clean Air Act's enhanced monitoring program. That court saw CAM as enhanced monitoring, which

is supposed to be a level of superior, better monitoring than what is normally found, and the court recognized that CAM meets that requirement.

And they also said that it enhances monitoring by requiring each major source to design a site-specific monitoring system sufficient to provide a reasonable assurance of compliance with emission standards. I think, again, the use of that word "reasonable" is important.

They also stated that it permits owners to certify compliance within the degree of certainty that CAM provides. And this is, I think, really important here when certifying compliance.

All monitoring, even if it's a continuous emission monitor, contains some uncertainty, some error, some degree of uncertainty, even if it's very small. I think you need to recognize these various uncertainties when you're certifying compliance. If you have a continuous monitor that you have on for the acid rain program, for example, your uncertainty is going to be very small and maybe not even

recognized, but it's there.

When you are certifying compliance with CAM, it's important to recognize that that also provides limits. We're not saying that we are 100 percent certain that we are in compliance. You can never, ever, under any circumstances, say you are a hundred percent certain. The key is that given all the information that's there, including the CAM monitoring, can we reasonably certify compliance. And in most of the cases or all the cases I've been involved with CAM, that definitely has been the case.

MR. HARNETT: Marcie Keever?

MS. KEEVER: I'm actually just wondering if you could provide us with more examples -- the first thing you mentioned was just that consolidation has made review much easier for your clients.

MR. EVANS: Oh, yeah.

MS. KEEVER: I'm really interested in examples, because I know I'm definitely seeing some and want to hear it from your perspective.

MR. EVANS: In the past you had a situation where you had sometimes as many as 20 or 30 state